

DRAFT Minutes of the
Delta Protection Commission Meeting
October 23, 2003
Jean Harvie Community Center – 6:30 p.m.

1. Call to Order/Roll Call

Chairman McCarty called the meeting to order at 6:40 p.m.

Present: Chairman McCarty, Vice Chair Ferguson, Commissioners Cabaldon, Curtis, Forney, Kelly, Nottoli, Sanders, Shaffer, van Loben Sels, and Wilson.

Absent Commissioners Beltran, Calone, Coglianese, Glover, Johnson, McGowan, Ornellas, and Sturm.

2. Public Comments

There were no public comments.

3. Minutes of the Last Meeting

Commissioner Wilson moved approval of the minutes; Commissioner Shaffer seconded. The minutes were approved by voice vote.

4. Chairman's Report

Chairman McCarty thanked all those who participated in the October 15, 2003 Committee meeting. He said he felt the discussion was good and the consensus reached was helpful when looking back at Commission accomplishments and its future tasks relative to the increasing pressures the Delta will face over the next 10 years.

Chairman McCarty announced that since California has a new Governor-elect, the State and the Commission may be in a state of limbo. He said that the Secretary of Resources is now in an interim position and is charged with submitting the report on Commission to the Legislature by December 31, 2003. A letter has been sent to the Secretary urging her to either submit the report or allow the Commission to submit the report to the Legislature on its own behalf. Margit Aramburu, Executive Director, said she spoke with Resources Agency staff and they feel the report will be submitted in a timely manner.

The next meeting of the Delta Protection Commission is scheduled for Thursday, November 20, 2003, 6:30 p.m., at the Jean Harvie Community Center.

5. Commissioner Comments/Announcements

Commissioner Shaffer announced that the Department of Food and Agriculture (CDFA) would host the CALFED BDPAC Subcommittee on Working Landscapes on November 6, 2003 from 9:00 a.m. to noon. The meeting will take place at CDFA offices in Sacramento. He also announced that the stakeholder draft on Bulletin 160 is available for review, and the official public review draft will be available at the end of the year.

Commissioner Kelly announced that the Water Supply Subcommittee for the CALFED BDPAC would meet on November 10, 2003 at the Bonderson Building in Sacramento. The meeting will serve as a public forum for hearing the status of the CALFED Conveyance Program's CVP/SWP Project Integration Proposal, which will increase the export limit of the SWP pumps, implement water quality actions in the Delta, and establish a long-term Environmental Water Account for fishery enhancement and protection.

6. Attorney General's Report

Christine Sproul said she had nothing to report.

7. Executive Director's Report

Ms. Aramburu reported on several items:

- The Senate Select Committee on Delta Resources and Development hearing on the Delta Protection Commission has been changed to Wednesday, November 12, 2003, 10:00 a.m. – 12:00 p.m.; Jean Harvie Community Center in Walnut Grove
- Sacramento Bee Newspaper Articles were circulated at the meeting: *Mother Lodes of Mercury: Waste from Old Mines Poisoning State's Fish* and *Toxic Dilemma: Plans to Restore Delta and Bay Wetlands Could Create a Deadlier Form of Mercury Passes up the Food Chain*; and the Bay Institute *Ecological Scorecard: San Francisco Bay Index*
- Pending Projects Memo – contact staff with any questions.

8. Discussion of Future Options for the Delta Protection Commission and Possible Adoption of a Position on Future Options to Submit to Secretary of Resources and the Legislature

Chairman McCarty convened the public hearing. He announced that all issues would be open for discussion, and he was looking for a range of discussion—including criticism—if the Commission has come up short, not done its job, or had a weakness in any area. He suggested topics for discussion: (1) Commission to continue as it has over the last ten years; (2) work on the outlines, actions, plans the Commission has generated; (3) change or make modifications to the make-up of the Commission; and (4) the range and/or scope of areas the Commission should be further/less involved with. He also asked that everyone focus on the relationship of the Delta Primary Zone to the Secondary Zone; the urban encroachment occurring in the Secondary Zone and the pressure it may exert on the Primary Zone in the future; and mechanisms for addressing those pressures.

Ms Aramburu provided the Commission with a background memo on the history and accomplishments of the Commission and a summary of the Committee meeting discussion.

Chairman McCarty circulated a memo from Commissioner Curtis that was submitted for the Committee meeting and thanked him for those comments

Commissioner van Loben Sels suggested that the list of accomplishments should include accomplishments such as the Commission's work to preclude the City of Sacramento's and the City of Elk Grove's attempts to expand their Spheres of Influence into the Primary Zone. He said these are examples of the Commission's accomplishments in protecting a portion of the Delta from urbanization.

Commissioner van Loben Sels added that one area of change is in land ownership by nonprofits and state and federal agencies from 1993 to the present. In 1993 the ownership was 7 percent and currently 17 percent of the Delta was controlled by non-profits and state and federal agencies. He said if we ask if the Commission represents the cross-section of landowners in the Delta given the changes in land ownership over the past few years, it does not reflect that change. He stated that since land ownership has changed, then representation could change.

Commission Shaffer suggested that the Department of Fish and Game's (DFG) response to the Commission's review and comments on acquisitions in the Yolo Bypass should be added to the list of Commission accomplishments as it has set a precedent for open planning and decision-making.

Chairman McCarty asked for Commission comment on the Legislative Budget Committee question: "Has the Commission been deemed redundant by the California Bay Delta Authority (CBDA) or any other entity?"

John Banks, fisherman, said that the Commission has done a good job at interacting with other government entities; however, it should do more outreach to get the "pulse" of the people who are involved in Delta issues on a daily basis. He said outreach would give the Commission an idea of what its main concerns should be.

Commissioner Curtis said the Legislature is asking what will the Commission contribute to the future of the Delta. He said there are a lot of actions described in the original legislation that could be expanded. He said for example DFG will be taking over the CALFED ecosystem restoration program and the Commission could help provide input from diverse groups. He said the Commission has been instrumental in providing a forum for local input.

Steve Mello, former Commissioner, stated that much of the information being sought at the public hearing has been discussed in Commission meetings in the past, and is being implemented by State and Federal agencies working in the Delta through CALFED. Mr. Mello suggested researching the input Commission has already provided. He also said that background reports acknowledged that agencies would perform habitat restoration without negative socio-economic impacts in the Delta, and the Commission targeted low lands of districts and found out there is quite a bit of work that can be done on these marginal lands.

Mr. Mello said he originally opposed the creation of the Commission, but since its creation could not be stopped, he sought local representation and some key changes such as ability to continue to extract natural gas. He commented that the Commission has brought together State agencies and other Delta interests. He said the Commission should continue to serve as a clearinghouse for information and concerns. He said he thinks the Commission will be hearing more appeals in the future. He said he sees the Commission "morphing" into an agency that coordinates the activities of the State and federal resource agencies acting in the Delta carrying out the CALFED program. He said the agencies should comply with CEQA and NEPA prior to expenditure of public funds in the Primary

Zone. He supports continuation of the Commission, as does the Central Valley Flood Control Agency and the North Delta Water Agency.

Chairman McCarty commented that the Commission is unique in that it has developed a level of trust and responsibility with Delta citizens, and those attributes would be lost if the Commission were moved into another statewide agency. He felt there was no need for the Commission to be a "policing" force to get the job done.

Commissioner van Loben Sels said the Commission should reinforce the language in its Plan concerning conservation easements; and since the Commission serves at the will of the Legislature, the Legislature should support implementation of a permanent easement program. He said the role of the Commission in the future should include agricultural land preservation for that portion of the Delta that is the most productive.

Jeff Hart, Hart Restoration, said he is dedicated to stopping erosion and protecting the levee through habitat restoration. He said the worst possible scenario is flooding of a series of islands and the possible impact to the economic health of the region. He made several suggestions including:

- Support partnerships and coalitions to implement regional goals and activities.
- Appoint task forces to bring together different view of specific issues.
- Encourage local Delta residents to apply for funding to implement CALFED goals.
- Work with local landowners to address issues, for example through the creation of new groups and conservancies.
- Possibly add new representation to the Commission representing new stakeholders in the region.

He spoke to the commonality of the larger Delta community and supported moving forward on the many issues in the Delta.

Chairman McCarty asked the Commission to reflect on the relevance of the line between the Primary and Secondary Zones. He said the Committee meeting noted that the Secondary Zone has continued to be developed over the last ten years, and many new developments are now up against the boundary of the Primary Zone. He said there is still an opportunity to acquire easements in the Secondary Zone in order to provide long-term protection of the Primary Zone.

Commissioner Cabaldon said the Commission should examine the boundary of the Secondary Zone, for example the City of Rio Vista is not in the Legal Delta. He noted that West Sacramento is in the Secondary Zone, but much of the City of Sacramento is not. He said the Commission could provide advice to local governments about projects in the Secondary Zone. He said that the Commission would have to delineate between the urban and the undeveloped areas in the Secondary Zone.

Commissioner Wilson asked why there is a Secondary Zone; Chairman McCarty explained that during the discussions about the legislation, the two zones were adopted.

Commissioner Cabaldon said the Secondary Zone could provide a buffer area, but currently includes undeveloped and developed areas. He said there could be three zones: a protected zone, a buffer zone, and a developed zone.

Commissioner van Loben Sels suggested a perimeter "zone" protected by easements that would serve to protect the core area of agriculture and habitat.

Mr. Mello added that the creation of the Secondary Zone was a political trade-off that was negotiated to get the legislation passed. He understands that the Commission has no real authority over development in the Secondary Zone.

Commissioner Cabaldon suggested the Commission could retain its authority over the Primary Zone and have limited powers to determine if projects in the Secondary Zone would have a negative impact on Delta resources.

Chairman McCarty said staff does comment on projects in the Secondary Zone, but those letters are not sent to the Commission.

Commissioner Forney expressed concern about the Commission becoming more involved in land use decisions in the Secondary Zone, and suggested using advisory boards instead.

Chairman McCarty introduced Assemblymember Lois Wolk, 8th District. She applauded the Commission on its proactive stance in evaluating its past, present and future. She stated the Delta's needs are more urgent now than they were in 1992 and she noted the Commission was successful in completing the regional planning document that was incorporated into the five Delta counties' General Plans. She explained that although the Commission is charged with enforcing the Plan through its appellate authority, it has only had exercise that authority once in the past ten years. She said that proves the effectiveness of the plan and willingness of local communities to abide by it.

However, that success has left time and effort to focus on monitoring CALFED, and while some CALFED actions have posed a threat to the Delta, other threats have not received enough attention from the Commission. She cited the City of Stockton's Preliminary Planning Map proposing annexation of four Delta islands in the Primary Zone, and noted that the City has approved tracts of housing and shopping centers in the Secondary Zone. She also noted that it's only a matter of time before the cities begin evaluating development in the Primary Zone.

She posed the following questions: (1) would the local communities value Commission enough to ensure the voices remain heard, and pay for its continuation; (2) does the currently adopted Plan protect the agricultural, recreational and environmental values of the Delta; and (3) if the local communities do not abide by the Plan, what could/would the Commission do about it? Moreover, she said the Commission should consider moving from planning and reporting duties to giving itself more authority and tools to protect the Delta.

Assemblymember Wolk offered to work with the Commission to develop reforms to ensure the Delta is protected from development pressures in an effort to strengthen the mission of the Commission. She stated the Commission should have the tools to protect the Primary Zone, and sees its value in providing a local forum from permitting in the Primary Zone and appellate authority in the Secondary Zone. She said she did not believe everyone that should be heard had a seat on the Commission, and suggested that other landowners in the Delta could be incorporated into the discussions to provide better balance.

She further suggested the Commission further identify and look at the Primary/Secondary Zone issue (such as why Rio Vista is not in the Legal Delta).

Finally, the Commission should develop a permanent conservation strategy for the Primary Zone (securing and holding easements) because the Commission cannot protect the Primary Zone unless this is done. She noted that in 1992 there were only a few easements, and noted that the City of Davis has a mitigation ordinance that requires one to one protection of agricultural land when agricultural land is developed. She reiterated her offer to help the Commission.

Commissioner Kelly said she like the idea of the Commission getting more involved in issues and projects, and noted a real need to protect the Delta. She asked what is the appropriate level of power for a new and improved Commission?

Commissioner Shaffer suggested that the Commission become a "responsible agency" under CEQA, rather than a commenting agency. He agreed with Commissioner Forney's earlier comments on local development's role as it relates to the Primary Zone, and reinforced that Commission has the authority to implement getting conservation easements that could be used to create a ring around the Delta to protect the Primary Zone resources. He said the Commission should review the South Delta project and the Napa agreement.

Commissioner Wilson asked what the Commission could do if the City of Stockton incorporated a Delta island into the City limits. Ms. Sproul said that cities and counties have an obligation to keep their Plans consistent with the Commission's Plan, therefore if a city proposes something inconsistent with the Plan, the Commission would be in a position to advise them as such. If the action is pursued, then an aggrieved party could appeal the action to the Commission; Commission has the authority to overturn the action. Finally, the Commission could file a suit against the City.

Vice Chair Ferguson said the Commission should be the "gatekeeper" of proposed projects to either monitor or slow them down. He said in the next ten years, pressure will increase on agriculture and the environment.

Chairman McCarty noted the Stewart Tract (River Islands project site) was part of the political trade-off of the original legislation, and was included in the Secondary Zone before the Commission was created. It was understood that land uses in Secondary Zone would change.

Commissioner Curtis said he agrees that the Commission's job is to protect the Delta and should use whatever tools necessary to do so, such as commenting on projects in the Secondary Zone. He said if the Commission is ignoring projects in the Secondary Zone that would have a negative impact on the Primary Zone, then it may be derelict in its duties.

Commissioner McCarty agreed that the pressure for urban development has escalated in the last five years. He said there is and will be impact from "spillage" associated with development. He said that once the Secondary Zone disappears, that "spillage" will have a detrimental effect on the Primary Zone. He felt that if the Commission encourages conservation easements and acquisitions by non-governmental agencies and tries to preserve a buffer around the Primary Zone, then the best and last opportunity is in the Secondary Zone, and the Commission should leverage every resource. He felt Commission was designed well in that it exercises its authority through the local agencies and State agencies, because those agencies have more "bite" than the Commission. He said he would continue to advocate for the Commission leveraging strength where it knows strength is, rather than replicating it.

Commissioner Curtis said he did not advocate taking over the role of city and county government in land use planning and land use management decisions; however, he suggested the Commission provide comments on projects in the Secondary Zone. He suggested the Commission determine where it wants to provide input and which resources should be acknowledged.

Chairman McCarty said there was no restriction on the Commission commenting on matters; however it was a matter of time, resources, effort and more importantly, knowledge. He said that many times the Commission does not know of a project until it is late in the process, so it must be notified of pending projects.

Mr. Harry Moore, resident of Stockton, testified that the Commission was the best disseminator of information on the Delta. He said most people do not realize how their water gets to them and how delicate water is. He reported that each year more water is leaving the Delta than is coming in. Furthermore, the water tables have been abused and he felt the Commission should have more authority to oversee the water tables. Mr. Moore provided the Commission with the publication "*Investment Guide for California Water Future*" by the Department of Water Resources.

Gary Adams, President, California Striped Bass Association (CSBA), West Delta Chapter, declared that other organizations are very interested in the quality of the Delta. He noted that the Department of Fish and Game is in "dire straights", and CSBA has provided \$650,000 from its striped bass stamp fund for additional overtime for game wardens and updated equipment so that they can enforce various activities in the Delta. Mr. Adams thanked the Commission, Mr. Mello and other organizations for providing him with recreational opportunities on farmlands; opportunities he is extending to young people and other citizens. Mr. Adams said the Commission is very important and he sees its pressures

in the next ten years to be the protection of the water system in the Delta. He said his organization and others share Mr. Moore's concern about the water tables disappearing.

Commissioner Sanders noted that the Commission was originally proposed to have more authority, but the final legislation gave the Commission its more limited authority. He said the Commission may have become complacent in doing what it can through cooperation and coordination. He asked for input from Assemblymember Wolk as to what level of power the Legislature would support. He said there are things the Commission could do now, such as when commenting on projects in the Delta, adding the Commission as an additional agency of interest and concern. He said if you see the Primary Zone as a castle, how do you defend it--by staying inside to defend the castle, or by going out of the castle and conscientiously defending the castle. He suggested moving out into the Secondary Zone in order to protect the Primary Zone.

Commissioner Cabaldon said the State partners on the Commission should not be sanctimonious on this issue because the resource management plan is not binding on State agencies in the Primary Zone. He asked if the State agencies on the Commission should also consider conforming to the Commission's Plan. He said the Commission must keep in mind that the elected representatives (county supervisors and city officials) on the Commission have been elected to make land use choices, not the Commissioners. He said the State has an interest in the Delta that goes beyond the local interest and that is why the State funds the Commission. He acknowledged that the Commission is currently under pressure, and noted that if there is any proposal for additional authority in the Secondary Zone, or any funding from the Secondary Zone, then the Commission should determine which areas of the Secondary Zone are relevant and important to the Commission's mission. He suggested the Commission stay out of areas where there are not Delta resources issues, such as downtown West Sacramento.

Regarding membership, Commissioner Cabaldon noted that surrounding cities are doing the majority of development in Secondary Zone, yet the cities are the least represented governmental group on the Commission with only three City reps. He added that in addition to conservation easement holders, those with responsibility for water quality, fishing, and recreation public interests, are also missing from the Commission and suggested it may be appropriate to have some public appointees from the Governor and the Legislature to provide expertise in these other areas.

Commissioner Cabaldon said if the Commission is to examine the core areas and the Secondary Zone, the Commission should be more involved in ABAG and SACOG regional planning programs. He suggested that the Commission play a more formal role in conservation easements in the Primary Zone—as a conservancy, or as a facilitator of nonprofits or other groups.

Jim Ball, Solano Land Trust, commented that non-governmental landowners in the Delta are interested in reaching out and working with the Commission. Mr. Ball said that the Commission should work with existing land trusts in the area instead of creating new ones. He maintained that the mission of the Commission and the Solano Land Trust are the

same—preservation of agricultural, open space and education – and the two should work together.

Chairman McCarty opened the discussion of membership and funding.

Commissioner Shaffer described the discussion of the October 15, 2003 Committee meeting stating that the early discussions of membership resulted in geographic representatives, not representatives appointed by interest or expertise.

Commissioner van Loben Sels said the ownership of lands is different now that 1993 and there is a different political environment today. He recalled that after the Commission adopted its Plan, Mr. Mello had called a meeting of Delta stakeholders and there was support for continuing the Commission; an acknowledgement that the Commission was needed. He said membership on the Commission could change to reflect the change in land ownership.

Commissioner Cabaldon said that the Commission is currently appointed in a way that emphasizes the interests of agriculture, flood control, and protection of the Islands, not a sub-region as a whole. He suggested public members additional interests would broaden the Commission.

Commissioner Wilson said the original membership ensured that the local residents and agricultural interests had a seat at the table. He said it would be politically palatable to add some new seats, but suggested that any new members also be Delta landowners.

Commissioner van Loben Sels said that since non-governmental agencies now own Delta islands, their problems are common problems—i.e., maintaining levees.

Chairman McCarty agreed that non-governmental organizations and government agencies that own land in the Delta must protect the levees. Therefore, they are interested in flood control and land use—whether it is agriculture or habitat. Chairman McCarty said that Reclamation District members on the Commission are the only ones that are elected to serve on the Commission. He said he is cognizant about representing all landowners in his area including duck clubs, marinas, yacht clubs and others. He said he is concerned about providing public access safely. He noted that there are distinct issues and economies in the different sub-regions of the Delta, and he said there is now better understanding of those issues now that he has sits on the Commission with representatives of other sub-regions. He agreed that the membership could be broadened, but he felt new members should not have a single-issue focus.

Mr. Mello said that if the Commission were to seek agriculture and wildlife conservation easement funds, the grants would not fund staff, and the current Commission staffing levels would make it difficult for the Commission to have, hold, and monitor conservation easements. He said it would be up to the Legislature to enable the Commission to broaden its scope to address these duties and to ensure the Commission has adequate resources to obtain and monitor easements.

Commissioner Curtis suggested a subcommittee to work with Assemblymember Wolk on her ideas for the Commission.

Chairman McCarty stated that he expected no specific product from the meeting. He said there is a two-member Committee in place (McCarty and Coglianese). He said the effort of the October 15, 2003 meeting and tonight's meeting was to hear thoughts from the Commission, the Legislature, and the public. He also said that the lack of resources has made the Commission rely on others for implementation, and those groups have flourished because Commission does not compete with them. He suggested the Commission should support the dialog. Chairman McCarty said a move toward a conservation easement program would be the best and last hope of preserving the Primary Zone. He suggested looking at the possible use of mitigation fees for development in the Secondary Zone to acquire easements in the Secondary Zone. He said such fees could possibly provide a piece of the funding the Commission needs to survive and continue to enhance the Delta.

Mr. Banks emphasized that water is the one element that binds all the Delta interests together and expressed concern that additional water may be exported from the Delta. He noted that water exported from the Delta is being resold to others.

Commissioner Cabaldon stated a proposal to use mitigation fees from the Secondary Zone to support the Commission would be inappropriate, although a fee on water transfers out of the Delta could be an appropriate funding mechanism. He said the issue of property ownership as a key to membership has been discussed, but there has not been a discussion of local assessments because the Commission is State agency protecting larger than local interests in Delta resources.

Commissioner van Loben Sels asked if the Commission could identify the Delta as a national treasure and obtain funding sources. He noted local sources can't fund that work and assessment would fund that work.

Mr. Mello said there is a lot of money being spent by State and federal agencies on Delta projects; however, it is a matter of directing that cash in the correct manner. He said there are State and federal grant dollars, and foundation grants, but it is a matter of having the appropriate staff to compete for those monies.

Assemblymember Wolk said there are ways of financing State and non State interests of protecting the Delta. She said she would contact Senator Machado to jointly develop concepts and agreed there may be funds available for the Commission to carry out its mission, such as federal flood dollars.

Commissioner Nottoli suggested evaluating some type of water transfer fee on water flowing through the Delta, such as one penny per acre-foot.

Commissioner Shaffer noted there are several USDA grant programs that would provide funding for the Delta, including RC&D and Conservation Priority Area. He said there are

a number of opportunities that exists to attract federal dollars. There are significant opportunities within these programs to meet the multiple objects Commission has in terms of creating a buffer, protecting the Primary Zone, and meeting water quality and habitat goals.

Commissioner Cabaldon said the Commission has discussed these issues several times and suggested the Commission should provide some general comments to the Legislature that the Commission is willing to explore a more direct role in conservation easements, willing to look at the Secondary Zone boundaries, to play a strengthened or tiered role in land use to deal with urbanization, to look at a broadened membership, to explore other sources of funds such as a water transfer fee or federal funding. He suggested giving the Committee direction and allow the Committee to continue to work with the Legislature. Chairman McCarty asked if that was a motion; Commissioner Cabaldon agreed; Commissioner Wilson seconded the motion.

Chairman McCarty asked that the key points from this discussion be added to the memo from the Committee meeting and he asked that the Commission be open to hearing from the speakers at the Senate hearing on November 12th.

Commissioner van Loben Sels asked if the memo could be circulated to the Commission; Ms. Aramburu said she would check with counsel.

Commissioner Shaffer spoke in favor of the motion.

The motion was approved by a voice vote.

9. Adjournment

Chairman McCarty adjourned the meeting at 9:15 p.m.